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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) GEN Docket No. 90-314
) ET Docket No. 92-100
)
) RM-7140, RM-7175, RM-7617
) RM-7618, RM-7760, RM-7782
Amendment of the Commission's) RM-7860, RM-78977, RM-7978
Rules to Establish New Personal) RM-7979, RM-7980
Communications Services)
) PP-13

COMMENTS ON TENTATIVE DECISION

LiTel Telecommunications Corporation d/b/a LCI International ("LCI"), by its attorneys and pursuant to the Commission's Tentative Decision in this proceeding,¹ hereby submits comments concerning the Commission's decision to tentatively deny LCI's request for a pioneer's preference for personal communications services ("PCS").

I. Introduction and Summary

LCI is a facilities-based interexchange carrier headquartered in Dublin, Ohio. The company operates a fiber optic network that provides both switched and private line services. LCI has filed extensive comments on PCS in related proceedings before the Commission and the National Telecommunications and Information Administration ("NTIA")² and

¹ Tentative Decision and Memorandum Opinion and Order, 7 FCC Rcd 7794 (1992) ("Tentative Decision"). See Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 5676 (1992) ("PCS Notice").

² See LCI's Reply Comments filed January 8, 1993; LiTel Telecommunications Corporation Comments filed October 1, 1990 and
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has conducted extensive PCS testing pursuant to experimental authorization 1481-EX-R2-90.

In its pioneer preference request, filed October 10, 1991 and supplemented on April 28, 1992, LCI demonstrated that it is a leader in the development of PCS services. Specifically, the Commission has type-certified the equipment developed by LCI and Cylink Corporation to operate in the 5.725-5.850 Ghz bands under Section 15.247 of the Commission's Rules. Moreover, LCI has successfully tested the equipment in the Columbus area, transmitting voice over a 3-mile link and transmitting composite data over back-to-back links of 8.6 miles and 1 mile, respectively.³

There is no question that LCI is an innovator that has brought PCS technology to a more advanced and effective state. Yet the Commission has tentatively declined to award LCI a pioneer preference. LCI submits that the Commission's tentative decision was erroneous and that LCI should receive a pioneer

²(...continued)
reply comments filed January 15, 1991 in response to the Commission's Notice of Inquiry in GEN Docket No. 90-314, 5 FCC Rcd 3995 (1990). In the Matter of Cellular 21, Inc., RM-7140, released November 3, 1989; In the Matter of PCN America, Inc., RM-7175, released November 15, 1989; In the Matter of an Inquiry Relating to Preparation for the International Telecommunications Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum, Gen. Dkt. No. 89-554, released December 13, 1989; In the Matter of Establishment of Procedures to Provide a Preference to Applications Proposing An Allocation for New Services, Gen. Dkt. No. 90-217, released April 27, 1990; In the Matter of Comprehensive Study of the Domestic Telecommunications Infrastructure, NTIA Dkt. No. 91296-9296, released January 3, 1990; In the Matter of Comprehensive Study of the Domestic Telecommunications Infrastructure, NTIA Dkt. No. 91296-9296, released January 3, 1990; In the Matter of Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum, NTIA Notice of Inquiry, released December 4, 1989.

³ See Third Experimental Report, filed April 28, 1992.

preference for its work in proving the feasibility of Part 15 point-to-point transmission technology for PCS applications.

II. Discussion

Section 1.402 of the Commission's Rules provides that the Commission will award a preference where the requesting party "has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service."⁴ In denying LCI's request, the Commission stated, with regard to LCI's proposal (and those of eleven others):

the technical showing or preliminary result does not demonstrate the feasibility of the technology, or that the requester has developed the capabilities or possibilities of a specific identifiable PCS technology or service or has brought it to a more advanced or effective state.⁵

Significantly, the Commission did not find that (1) LCI's proposal was not "innovative," (2) that LCI's proposal did not "lead to the establishment of a service not currently provided or a substantial enhancement of an existing service," (3) that LCI's was not the first to make such a proposal or (4) that LCI proposal was not related to the proposals made in the PCS Notice. In its decision, the Commission focused solely on three potential "deficiencies" in LCI's request.⁶ As demonstrated below,

⁴ 47 C.F.R. § 1.402(a) (1993).

⁵ 7 FCC Rcd 7794, 7805 (¶ 25) (emphasis added).

⁶ It is unclear which of the three "deficiencies" were found to exist in LCI's proposal. LCI therefore responds to each in turn. However, LCI objects to the Commission's failure to address specifically "deficiencies" contained in LCI's proposal. To the extent the tentative decision is merely a "proposal," the Commission has not provided LCI with an adequate opportunity to
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however, the Commission's tentative decision is erroneous and should be reversed.

A. LCI's Technical Showing Demonstrates The Feasibility of The Technology

Contrary to the Commission's finding, LCI has demonstrated the technical feasibility of its Part 15 technology. In its third experimental report, filed simultaneously with a supplement to its pioneer preference request on April 28, 1992, LCI submitted its test results and a copy of a Grant of Equipment Authorization for its Part 15 spread spectrum transmitter.⁷ Not only does LCI's equipment work, it has been type certified by the Commission. The Commission's finding to the contrary in the Tentative Decision is clearly erroneous.

B. LCI Has Developed The Capabilities Of a Specific PCS Technology

The PCS Notice defines personal communications services as "a family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks."⁸ LCI's proven technology will support PCS by connecting base stations via Part

⁶(...continued)
respond to its proposed action. See McLouth Steel Products Corp. v. Thomas, 838 F.2d 1317, 1323 (D.C. Cir. 1988) (holding that an agency's notice cannot address proposals "in a crabwise fashion"); Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 549-50 (D.C. Cir. 1983) (holding that an agency's notice should not be "an elaborate treasure hunt"). To the extent the tentative decision constitutes substantive agency action, it is arbitrary and capricious because the Commission has failed to articulate adequately the basis for its decision. E.g., Western Union Corp. v. FCC, 856 F.2d 315, 318-320 (D.C. Cir. 1988); City of Brookings Municipal Telephone Co. v. FCC, 822 F.2d 1153, 1165 (D.C. Cir. 1987).

⁷ FCC ID G83FT1ARU (File No 31010/EQU 4-3-2).

⁸ PCS Notice, 7 FCC Rcd at 5689 (¶ 29).

15 point-to-point wireless links. Use of wireless technology, rather than cable, will permit operators to construct mobile networks quickly and inexpensively. There will be no need to string cable on poles or bury cable underground. Moreover, operators will be able to design and build flexible networks that can be efficiently adjusted to meet the changing demands and calling patterns of customers.

LCI's proposal serves the same function as Cox Enterprises' "spectrum-efficient proposal to use the cable television plant for connecting PCS microcells. . . ." ⁹ As in the case of Cox's proposal, LCI's proposal "would permit economical and rapid deployment of PCS systems and substitution of existing infrastructure for increasingly scarce spectrum." ¹⁰ In LCI's case, the "existing infrastructure" would consist of Part 15 transmitters that would avoid the use of scarce spectrum in a network even less expensive to construct than coaxial fiber optic cable.

Like Cox Enterprises, which received a tentative preference, LCI has developed the capabilities of a specific PCS technology. Again, the Commission's finding to the contrary is clearly erroneous.

C. LCI Has Brought Its PCS Technology to a More Advanced and Effective State

LCI has been involved in PCS for over three years. As set forth in its request and experimental reports, LCI has funded and developed a crucial component of the PCS matrix. The spread spectrum transmitter developed by LCI is more advanced than any

⁹ Tentative Decision, 7 FCC Rcd at 7799 (¶ 12).

¹⁰ 7 FCC Rcd at 7800 (¶ 13).

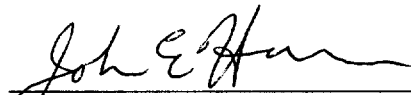
previous Part 15 equipment used to transmit voice and data over several miles. The technology is more effective than previous Part 15 technology because it has been proven to carry voice and data over up to eight miles. The Commission should therefore find that LCI has brought its PCS technology to a more advanced and effective state.

III. Conclusion

The Commission erred in denying LCI's request for a pioneer's preference to provide PCS. In making a final decision, the Commission should reverse its position and award a preference to LCI for its innovative proposal.

Respectfully submitted,

LITEL TELECOMMUNICATIONS CORPORATION
d/b/a LCI International



Randall B. Lowe, Esquire
John E. Hoover, Esquire
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, DC 20005-2088
(202) 879-3939

Its Attorneys

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